

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Lily Carayannis	Team: Team # 1	CCRB Case #: 201401094	<input type="checkbox"/> Force <input checked="" type="checkbox"/> Discourt. <input type="checkbox"/> U.S. <input checked="" type="checkbox"/> Abuse <input type="checkbox"/> O.L. <input type="checkbox"/> Injury
Incident Date(s) Sunday, 02/02/2014 12:35 AM	Location of Incident: § 87(2)(b)	18 Mo. SOL 8/2/2015	Precinct: 121
Date/Time CV Reported Tue, 02/04/2014 1:55 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 02/04/2014 1:55 PM

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Omar Elsayed	06763	950376	121 PCT
2. POM Emmanuel Kwo	01403	944715	121 PCT
3. SSA John Todaro	05234	903307	121 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Kenneth Greene	26490	945785	121 PCT
2. POM Stephen Furno	07578	948028	121 PCT
3. POM Vincent Setteducato	26690	948423	121 PCT
4. POM Joseph Perfetto	03325	949473	121 PCT
5. POM Bryan Burgess	14258	946809	121 PCT
6. POM Jonathan Decastro	14377	944489	121 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SSA John Todaro	Abuse: In front of § 87(2)(b) in Staten Island, SGT John Todaro detained § 87(2)(b) and § 87(2)(b)	
B.POM Omar Elsayed	Discourtesy: In front of § 87(2)(b) in Staten Island, PO Omar Elsayed spoke discourteously to § 87(2)(b)	
C.POM Emmanuel Kwo	Abuse: In front of § 87(2)(b) in Staten Island, PO Emmanuel Kwo frisked § 87(2)(b)	
D.POM Emmanuel Kwo	Abuse: In front of § 87(2)(b) in Staten Island, PO Emmanuel Kwo searched § 87(2)(b)	
E.POM Emmanuel Kwo	Abuse: In front of § 87(2)(b) in Staten Island, PO Emmanuel Kwo searched § 87(2)(b)'s book bag.	
F.POM Omar Elsayed	Abuse: In front of § 87(2)(b) in Staten Island, PO Omar Elsayed frisked § 87(2)(b)	
G.POM Emmanuel Kwo	Abuse: In front of § 87(2)(b) in Staten Island, PO Emmanuel Kwo frisked § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
H.POM Emmanuel Kwo	Abuse: In front of § 87(2)(b) in Staten Island, PO Emmanuel Kwo searched § 87(2)(b)	
I.SSA John Todaro	Abuse: In front of § 87(2)(b) in Staten Island, SGT John Todaro frisked § 87(2)(b)	
J.SSA John Todaro	Abuse: In front of § 87(2)(b) in Staten Island, SGT John Todaro searched § 87(2)(b)'s bag.	
K.POM Omar Elsayed	Abuse: At § 87(2)(b) in Staten Island, PO Omar Elsayed threatened to notify Administration for Children's Services.	
L.POM Omar Elsayed	Abuse: At § 87(2)(b) in Staten Island, PO Omar Elsayed threatened to arrest § 87(2)(b) and § 87(2)(b)	
M.SSA John Todaro	Abuse: At § 87(2)(b) in Staten Island, SGT John Todaro threatened to arrest § 87(2)(b)	
N.POM Omar Elsayed	Abuse: PO Omar Elsayed entered § 87(2)(b) in Staten Island.	
O.SSA John Todaro	Abuse: SGT John Todaro supervised the entry and search of § 87(2)(b) in Staten Island.	
P.SSA John Todaro	Discourtesy: In front of § 87(2)(b) in Staten Island, SGT John Todaro spoke discourteously to § 87(2)(b)	

Case Summary

On February 2, 2014, at approximately 12:35 a.m., PO Emmanuel Kwo, PO Omar Elsayed, and SGT John Todaro, all from the 121st Precinct, were performing a vertical patrol at § 87(2)(b) in Staten Island. While on the roof, they observed § 87(2)(b) and § 87(2)(b) allegedly packaging narcotics through § 87(2)(b)'s bedroom window (encl. C2). PO Elsayed and PO Kwo went to the front of the building to attempt to stop § 87(2)(b) and § 87(2)(b) on their way out of § 87(2)(b) while SGT Todaro remained on the roof. While they waited, § 87(2)(b) entered the building and told the officers he was going to go see “§ 87(2)(b) which PO Elsayed knew to be a nickname of § 87(2)(b). Shortly thereafter, § 87(2)(b) and § 87(2)(b) exited the building, where they were stopped by PO Kwo and PO Elsayed, as per instructions from SGT Todaro (**Allegation A**). PO Elsayed said to § 87(2)(b) “You know me. I don’t treat you like fucking shit” (**Allegation B**). PO Kwo frisked § 87(2)(b) searched § 87(2)(b)'s jacket, and searched his backpack (**Allegations C, D, and E**). PO Elsayed frisked § 87(2)(b) (**Allegation F**). PO Kwo frisked and searched § 87(2)(b) (**Allegation G and H**). SGT Todaro came to the front of the building and frisked § 87(2)(b) (**Allegation I**). SGT Todaro searched a black plastic bag that § 87(2)(b) was holding (**Allegation J**). PO Bryan Burgess and PO Jonathon Decastro responded to the front of the building at this time.

PO Elsayed went to the § 87(2)(b) floor apartment. § 87(2)(b) and § 87(2)(b) § 87(2)(b)'s sister and mother respectively, answered the door. PO Elsayed asked to enter the apartment and § 87(2)(b) and § 87(2)(b) told him that he could not enter. PO Elsayed allegedly told § 87(2)(b) that if he had to get a warrant, he would call ACS for her child and that she and § 87(2)(b) were going to be arrested (**Allegation K and L**). SGT Todaro came up to the apartment and threatened to arrest § 87(2)(b) (**Allegation M**). PO Elsayed and SGT Todaro entered the apartment and searched § 87(2)(b)'s bedroom (**Allegation N and O**). At one point, PO Kwo also entered the apartment. PO Elsayed found marijuana, oxycodone, and drug paraphernalia in the bedroom, but not the crack cocaine that they had allegedly seen packaged. SGT Todaro allegedly told § 87(2)(b) "You're a fucking lucky man. You know what the fuck you was doing." (**Allegation P**). § 87(2)(b) and § 87(2)(b) were released after more than an hour without being arrested or summonsed.

This case has video from § 87(2)(b)'s cellphone, NYCHA security footage, and § 87(2)(b)'s tablet.

§ 87(2)(g)

Mediation, Civil, and Criminal Histories

The victims in this case have not filed a notice of claim with the City of New York in regards to this incident (encl. T11). § 87(2)(b) declined to mediate this complaint. § 87(2)(b) | §§

87(2)(c)]

Civilian and Officer Histories

Allegation C—Abuse of Authority: In front of § 87(2)(b) in Staten Island, PO Emmanuel Kwo frisked § 87(2)(b)

Allegation F—Abuse of Authority: In front of § 87(2)(b) in Staten Island, PO Omar Elsayed frisked § 87(2)(b)

Allegation G—Abuse of Authority: In front of § 87(2)(b) in Staten Island, PO Emmanuel Kwo frisked § 87(2)(b)

Allegation I—Abuse of Authority: In front of § 87(2)(b) in Staten Island, SGT John Todaro frisked § 87(2)(b)

It is not disputed that all the individuals were frisked.

NYCHA surveillance video (encl. I1-6) depicts PO Kwo frisking § 87(2)(b) and § 87(2)(b) from head to toe. It further depicts PO Elsayed frisking § 87(2)(b) from head to toe. SGT Todaro is also depicted frisking § 87(2)(b) from head to toe. SGT Todaro, PO Kwo, and PO Elsayed identified themselves and each other when viewing the video.

§ 87(2)(b) (encl. D1-6) stated that after an exchange with the officers where he complained that the officers are always searching him and harassing him, PO Kwo and PO Elsayed searched him and his brother. § 87(2)(b) (encl. E1-5) stated that PO Kwo frisked him from his head to his toes.

PO Elsayed prepared Stop, Question, and Frisk Reports (encl. K4-6) that confirmed that the victims were frisked. He checked only the “other” box and wrote that the victims were frisked because they were observed packaging drugs. Their demeanor was noted as being nervous and uncooperative. In his CCRB statement, PO Elsayed (encl. K7-11) said that he observed bulges in all of the victim’s waistbands. He stated that these bulges appeared to be heavy objects and in the shape of a firearm. He could not recall if, when frisked, the officers discovered any object on their waistband and he did not see any bulges anywhere else on their bodies. PO Elsayed also believed that § 87(2)(b) and § 87(2)(b) were armed because he believed that they had been arrested previously for violent offenses.

PO Kwo (encl. L1-7) stated that he observed a hard object on § 87(2)(b)’s waistband, but he could not describe what the object looked like and he could not recall what it felt like.

SGT Todaro (encl. M1-9) stated that the officers frisked the individuals as they had observed these individuals engaged in a drug transaction. He did not see any bulges on any of the individuals and did not suspect them of having a weapon for any reason beyond the drug packaging he observed.

People v. DeBour 40 N.Y.2d 210, 215 (encl. A24-34) Officers are permitted to frisk an individual when they have reasonable suspicion that the individual has a weapon.

People v. Boulware 130 A.D.2d 370 (encl. A42-44) While a person’s criminal history may be relevant to providing founded suspicion of criminality, an officer’s knowledge of that individual’s history alone does not constitute founded suspicion of criminality.

People v. Forrest, 77 A.D.3d 511 (App. Div. 1st Dep’t 2010) (encl. A63) Suspicion that an individual has engaged in a drug transaction is an insufficient basis for frisking such person.

People v. Rodriguez 18 Misc. 3d 1124A (encl. A45-49) A frisk must be limited in scope to the areas where the officer suspects a weapon may be located. (See also *People v. Hill* 262 A.d.2d 870 (encl. A50-51).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation D—Abuse of Authority: In front of § 87(2)(b) in Staten Island, PO Emmanuel Kwo searched § 87(2)(b)

§ 87(2)(b) (encl. D1-6) stated that PO Kwo searched all of his pockets. § 87(2)(b) (encl. E1-5) did not see this. PO Kwo (encl. L1-7) did not recall if he searched § 87(2)(b) and PO Elsayed (encl. K1-11) did not recall seeing this. The NYCHA video footage (encl. I1-6) is not clear enough to see if PO Kwo reached into any of § 87(2)(b)'s pockets and is thus inconclusive. In the video provided by § 87(2)(b) (encl. H1-4), § 87(2)(b) attempted to reach in his pocket to retrieve his identification, but PO Elsayed stopped him from doing so. § 87(2)(b) then asked PO Elsayed and PO Kwo if they would reach into his right pocket and remove his student identification for him so that he could prove that he was a student.

§ 87(2)(g)

Allegation E—Abuse of Authority: In front of § 87(2)(b) in Staten Island, PO Emmanuel Kwo searched § 87(2)(b)'s book bag.

§ 87(2)(b) (encl. D1-6) alleged that PO Kwo searched his book bag. The NYCHA footage (encl. I1-6) shows PO Kwo searching § 87(2)(b)'s book bag.

In the video that was provided by § 87(2)(b) (encl. H1-4), he stated to PO Elsayed that every time the officer saw him, he searched him. He continued to complain that the officers were always harassing him and he stated that he had turned his life around and that he was currently a student. He told PO Kwo, “You want to see my school ID, my school books, my laptop, my essays, my final papers,” and “seriously I want you to search my book bag.” PO Elsayed, on the video, acknowledges having a relationship with § 87(2)(b) asks him how he has treated § 87(2)(b) in the past, and speaks to him using familiar terms.

PO Kwo (encl. L1-7) acknowledged searching the book bag as it may have possessed the drugs that the officers were looking for. PO Elsayed (encl. K1-11) did not recall which officer searched the book bag, but he acknowledged that it had been searched to look for crack cocaine.

People v. Caldwell 221 A.D.2d 973 (encl. A52-53) An officer is permitted to search an individual's property if they have consent that is freely and voluntarily provided.

§ 87(2)(g)

Allegation H—Abuse of Authority: In front of § 87(2)(b) in Staten Island, PO Emmanuel Kwo searched § 87(2)(b)

The NYCHA footage (encl. I1-6) depicts PO Kwo removing § 87(2)(b)'s hat and looking beneath it. It also depicts PO Kwo putting his fingers in § 87(2)(b)'s shoes.

PO Kwo (encl. L1-7) acknowledged that he removed § 87(2)(b)'s hat. PO Kwo stated that this action was consistent with a quadrant frisk and that it was standard. PO Kwo did not recall placing his fingers into § 87(2)(b)'s shoes.

People v. Reid 2014 NY Slip Op 08759 (encl. A54-56) “A search must be incident to an actual arrest, not just to probable cause that might have led to an arrest, but did not.”

Patrol Guide Procedure 212-11 Stop and Frisk (encl. A57-60) An officer is permitted to search an individual if the frisk reveals an object which may be a weapon.

§ 87(2)(g)

Allegation J—Abuse of Authority: In front of § 87(2)(b) in Staten Island, SGT John Todaro searched § 87(2)(b)'s bag.

It is not disputed that SGT Todaro searched the black plastic bag that § 87(2)(b) held during the incident. The bag contained candles.

SGT Todaro (encl. M1-9) and PO Elsayed (encl. K1-11) stated that they searched the bag as it was similar to the bag that they allegedly observed § 87(2)(b) place drugs in prior to the stop. Both officers agreed that the three individuals were not considered under arrest and that they would need to find the drugs before they could arrest them.

People v. Reid 2014 NY Slip Op 08759 (encl. A54-56) A search is not considered incident to a lawful arrest if the person could not have been arrested had the search not produced evidence of a crime.

§ 87(2)(g)

Allegation K—Abuse of Authority: At § 87(2)(b) in Staten Island, PO Omar Elsayed threatened to notify Administration for Children's Services.

Allegation L—Abuse of Authority: At § 87(2)(b) in Staten Island, PO Omar Elsayed threatened to arrest § 87(2)(b) and § 87(2)(b)

Allegation M—Abuse of Authority: At § 87(2)(b) in Staten Island, SGT John Todaro threatened to arrest § 87(2)(b)

§ 87(2)(b) (encl. F1-6) and § 87(2)(b) (encl. g1-4) alleged that PO Elsayed threatened that if they refused to allow the officers to enter their home, they would be arrested and § 87(2)(b)'s children would be taken by ACS. § 87(2)(b) further alleged that SGT Todaro threatened to arrest her if she did not allow the officers to enter her apartment. The video that § 87(2)(b) took does not have audio and starts after the officers enter her home (encl. J1-2).

Both SGT Todaro (encl. M1-9) and PO Elsayed (encl. K1-11) denied saying this. No other officers were present for this exchange.

§ 87(2)(g)

Allegation N—Abuse of Authority: PO Omar Elsayed entered § 87(2)(b) in Staten Island.

§ 87(2)(b) and § 87(2)(b) both stated that prior to SGT Todaro coming to the apartment, PO Elsayed stuck his foot in between the door and the frame to keep it from closing. He held his foot there while he attempted to talk § 87(2)(b) and § 87(2)(b) into providing consent to search the apartment.

PO Elsayed denied that he placed his foot in between the frame and the door and he denied that any of the occupants attempted to shut the door.

§ 87(2)(g)

Allegation O—Abuse of Authority: SGT John Todaro supervised the entry and search of § 87(2)(b) in Staten Island.

It is not disputed that PO Elsayed went to the apartment before SGT Todaro came upstairs and that PO Elsayed conversed with § 87(2)(b) and § 87(2)(b) about the officers' desire to search § 87(2)(b)'s bedroom. PO Elsayed and PO Kwo only entered APT 3B once SGT Todaro was present and PO Elsayed searched § 87(2)(b)'s bedroom while SGT Todaro watched.

§ 87(2)(b) (encl. F1-6) stated that she denied the officers consent to enter her apartment numerous times, even under the threat of arrest and the threat to call ACS. The officers pushed past § 87(2)(b) who was in the door frame, and entered the apartment. § 87(2)(b) did not provide consent for the officers to enter and told them that they would need a warrant. § 87(2)(b) filmed herself speaking into her iPad and she filmed the officers in § 87(2)(b)'s bedroom (encl. J1-2). § 87(2)(b) (encl. D1-6), § 87(2)(b) (encl. E1-5), § 87(2)(b) and PO Decastro (encl. O1-6) all stated that while SGT Todaro and PO Elsayed were upstairs, § 87(2)(b) came to the front of § 87(2)(b) and was visibly upset, yelling about the officers upstairs.

§ 87(2)(b) (encl. G1-4) stated that PO Elsayed threatened § 87(2)(b) with arrest and ACS if she did not provide consent for the officers to enter the apartment. § 87(2)(b) stated that she told PO Elsayed that he would need a search warrant to enter her apartment. SGT Todaro moved § 87(2)(b) from the door frame and PO Elsayed entered the apartment searching § 87(2)(b)'s room.

PO Elsayed (encl. K1-11) stated that he asked § 87(2)(b) if he could enter the apartment to safe guard evidence from his prior observation. Prior to this, PO Elsayed believed that SGT Todaro had attempted to call the Field Investigations Officer (FIO) to obtain an emergency search warrant for the location, but he did not know the result of that telephone call and no further attempt was made to obtain this to his knowledge. § 87(2)(b) did not appear reluctant to let the officers enter and they entered and went to § 87(2)(b)'s bedroom. PO Elsayed stated that § 87(2)(b) was "probably" yelling at the officers, but he was not paying attention to her as he was focused on searching. No consent to search form was filled out. PO Elsayed stated that in his experience, consent to search forms are filled out after contraband is found. PO Elsayed's memo book stated that he discovered in the bedroom "plenty of other narcotics," including marijuana, oxycodone, and drug paraphernalia. In his statement, he said that there was a "small amount" of marijuana, small bags, and an unknown number of oxycodone pills. PO Elsayed stated that § 87(2)(b) was not arrested for the aforementioned drugs, as these were not the drugs that PO Elsayed had observed in his custody.

SGT Todaro (encl. M1-9) stated that when the officers first observed § 87(2)(b) packaging the crack cocaine, either SGT Todaro or PO Elsayed attempted to call the FIO to

obtain an emergency search warrant, but the FIO did not answer. He did not make any further attempt to obtain a warrant. § 87(2)(b) stated that the officers could enter. No consent to search form was prepared, but SGT Todaro did not know why. SGT Todaro entered with PO Elsayed. SGT Todaro instructed PO Elsayed to search for the crack cocaine. § 87(2)(b) began filming the incident with her tablet and telling her mother that she did not have to allow the officers to search the apartment. § 87(2)(b) then told the officers that she was uncomfortable with their presence and she asked them to leave.

PO Kwo (encl. L1-7) went to the apartment after the initial entry by SGT Todaro and PO Elsayed. The officers entered in order to search § 87(2)(b)'s bedroom for narcotics. PO Kwo heard § 87(2)(b) yelling and telling her mother that she did not have to let the officers search the bedroom. PO Kwo was not present when the officers first entered, but he learned later from PO Elsayed that § 87(2)(b) allowed the officers to enter.

§ 87(2)(g)

People v. McBride 14 N.Y.3d 440 (encl. A35-41) Officers may enter a dwelling without a warrant if they have probable cause to believe the suspect committed a crime and exigent circumstances justify the warrantless entry. In determining whether exigent circumstances are present, the following factors are considered: (1) the gravity or violent nature of the offense; (2) whether the suspect is reasonably believed to be armed; (3) a clear showing of probable cause to believe that the suspect committed the crime; (4) strong reason to believe that the suspect is in the premises being entered; (5) a likelihood that the subject will escape if not swiftly apprehended; and (6) the peaceful circumstances of the entry. The ultimate inquiry, however, is whether in light of all the facts of a particular case there is an urgent need justifying the warrantless entry.

People v. Osorio 34 A.D.3d 1271 (encl. A61-62) Securing a dwelling to prevent the destruction of evidence while a search warrant is being sought is not an unreasonable seizure of the dwelling.

Georgia v Randolph 547 U.S. 103 (2006) (encl. A2-23) Consent given by one occupant is not valid in the face of a refusal of another physically present occupant.

§ 87(2)(g)

§ 87(2)(g)

Allegation P—Abuse of Authority: In front of § 87(2)(b) in Staten Island, SGT John Todaro spoke discourteously to § 87(2)(b)

§ 87(2)(b) (encl. E1-5) alleged that at the conclusion of the stop, SGT Todaro stated, “You’re a fucking lucky man. You know what the fuck you was doing.” SGT Todaro (encl. M1-9) denied stating this and none of the other civilians or officers heard this statement. § 87(2)(g)

Team: One

Investigator: _____ Lily Carayannis March 16, 2015
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date